

REMARKS

The Office Action mailed December 29, 2008, has been carefully considered.
Reconsideration in view of the following remarks is respectfully requested.

Claim Objections

Claims 16 and 18 have been amended in accordance with the suggestions in the Office Action, which are gratefully acknowledged. Specifically, in order to address the antecedent basis issues, the dependency of claim 16 has been changed to claim 15, and the dependency of claim 18 has been changed to claim 17.

Rejection(s) Under 35 U.S.C. § 102(b)

Claims 1, 5-8, 10-12, 15, 20-21, 25-28, 30-32, 35 and 40 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Tracton (U.S. pat. no. 6,470,378). Applicants respectfully traverse.

Claim 1 recites, *inter alia*,

a radio modem connected to the processor, the radio modem communicating the identity of the particular selection to a provider over a cellular network and receiving the selection in electronic format from the provider via the cellular network...

(Emphasis added)

Tracton, by comparison, is concerned with conventional network connections, such as an Ethernet connection through the Internet, and seeks to match delivery of content to the type of link that is used by a client that has requested the content from a server. Depending on the speed of the link (and the processing capabilities of the client), the content is delivered to the client in such a manner as to not overwhelm the client's ability to receive and process it. While Tracton mentions the use of a modem (FIG. 9, #446), as the Office Action correctly points out, there is no teaching or suggestion that this is a radio modem, as presently claimed, for use in a cellular network for requesting and delivering content over the cellular network. (Request and delivery over a cellular network are also claimed in claim 21, the only other independent claim).

Moreover, the passage in column 7, lines 26-34 to which the Office Action makes reference merely mentions the support of architectures such as cellular-phone based browsers; however, such mention is non-enabling of the invention as claimed, which includes the use of a radio modem for requesting and delivering content over a cellular network. As explained above, Tracton fails to disclose or suggest such features.

It will be appreciated that, according to the M.P.E.P., a claim is anticipated under 35 U.S.C. §102 only if each and every claim element is found, either expressly or inherently described, in a single prior art reference.¹ The aforementioned reasons clearly indicate the contrary, and withdrawal of the 35 U.S.C. § 102 rejection of claims 1, 5-8, 10-12, 15, 20-21, 25-28, 30-32, 35 and 40 based on Tracton is respectfully urged.

Rejection(s) Under 35 U.S.C. § 103(a)

Claims 2-4, 9, 13-14, 16-19, 22-24, 29, 33-34 and 36-39 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tracton.

Claims 2-4, 9, 13-14, 16-19, 22-24, 29, 33-34 and 36-39 variously depend, directly or indirectly, from base claims 1 and 21 addressed above. As explained above, Tracton fails to disclose or suggest requesting and delivering content over a cellular network as recited in the base claims. Accordingly, claims 2-4, 9, 13-14, 16-19, 22-24, 29, 33-34 and 36-39, which by definition include all the limitations of the base claims, are patentable over the combination of these references.

Conclusion

In view of the preceding discussion, Applicants respectfully urge that the claims of the present application define patentable subject matter and should be passed to allowance.

If the Examiner believes that a telephone call would help advance prosecution of the present invention, the Examiner is kindly invited to call the undersigned attorney at the number below.

¹ Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Please charge any additional required fees, including those necessary to obtain extensions of time to render timely the filing of the instant Amendment and/or Reply to Office Action, or credit any overpayment not otherwise credited, to our deposit account no. 50-3557.

Respectfully submitted,
NIXON PEABODY LLP

Dated: April 29, 2009



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